



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 20th day of July, 1998

LIAT (1974) Limited

Served July 20, 1998

**Violations of 49 U.S.C. § 41301
49 U.S.C. § 41712, 14 CFR Part 212
and Order 97-1-20**

CONSENT ORDER

This order concerns violations by LIAT (1974) Limited ("LIAT") of 49 U.S.C. § 41301, which requires that foreign air carriers hold permit authority from the Department in order to provide service to or from the United States, and certain other related statutory and regulatory provisions, as well as a prior consent order. This consent order directs LIAT to cease and desist from future similar conduct and to pay a compromise civil penalty.

On August 1, 1996, LIAT, a foreign air carrier of Antigua and Barbuda, requested from the Department, and was granted, an exemption from the permit requirements of 49 U.S.C. § 41301 to operate scheduled and charter service to certain points in the U.S. for a period of one year. Under this exemption, LIAT conducted service from a number of Caribbean locations to San Juan and points in the U.S. Virgin Islands. However, the carrier failed to file for a renewal or extension of its exemption authority until April 1998, nearly nine months after its authority expired, and in the interval operated several hundred unauthorized flights to the U.S. The carrier's continued service, moreover, violated the cease and desist provisions of Order 97-1-20, a previous consent order against the carrier related to similar conduct in 1996, in addition to the cited statutory

provision, and constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.¹

Apart from unlawful operations conducted in its own name, LIAT also performed unauthorized wet lease service on behalf of Aerolineas Dominicanas, a Dominican carrier, between the Dominican Republic and San Juan, in violation of 14 CFR Part 212 and 49 U.S.C. § 41301 during approximately the same time period discussed above. Although LIAT initially sought and was granted wet lease approval, the Department's approval under Part 212 expired on June 1, 1997. LIAT, nonetheless, continued to provide service in the market, consisting of several hundred flights, in violation of 49 U.S.C. § 41301. This wet lease service, in addition, constituted an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712 for the carrier held out the operation, in the *Official Airline Guide*, as a code-share service, without the requisite approval by the Department under Part 212.

In mitigation, LIAT states that the lapse of its authority was inadvertent and that there was no intention on the part of the carrier to violate Department rules or federal statutes. The carrier also states that its management was in the midst of a significant reorganization at the time its authority expired in 1997 and as a result it failed to give sufficient attention to the Department's regulatory requirements.

In order to avoid litigation and without admitting or denying the violations described above, LIAT has reached a settlement of this matter with the Office of Aviation Enforcement and Proceedings (Enforcement Office). Under this order, LIAT consents to cease and desist from future violations of 49 U.S.C. § 41301, 49 U.S.C. § 41712, 14 CFR Part 212 and Order 97-1-20, and to the assessment of a \$90,000 civil penalty in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. § 46302.² Of this amount, LIAT shall pay \$45,000 in four installments over an 18-month period according to the schedule stated in the ordering paragraphs below. The remaining \$45,000 shall be suspended for one year following the service date of this order and shall be forgiven unless LIAT fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41301, 49 U.S.C. § 41712, 14 CFR Part 212 and Order 97-1-20 or this order during the year following service of this order. Should such violations occur, the entire unpaid portion of the \$90,000 assessed penalty shall become due and payable immediately. The Enforcement

¹ LIAT applied for renewal of its exemption authority by an application dated April 24, 1998. The Department granted the carrier 30-day exemptions by notices dated June 1, 1998 and June 30, 1998.

² Order 97-1-20 contained a provision which suspended payment of one-half of the civil penalty of \$20,000, to be forgiven one year after the issuance of the order, provided that the carrier committed no similar violations of federal aviation statutes or Department rules. LIAT's conduct has resulted in the suspended portion of this penalty becoming due and payable and the \$10,000 has been paid.

Office believes that the assessment of a civil penalty of \$90,000 in this instance is warranted in light of the nature and extent of LIAT's violations. This order and the penalty that it assesses will provide a strong incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. § 41301, 49 U.S.C. § 41712, 14 CFR Part 212 and related Department orders and regulations in the future.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as in the public interest;
2. We find that LIAT (1974) Limited violated 49 U.S.C. § 41301, 49 U.S.C. § 41712 and Order 97-1-20 by conducting scheduled and charter service between points in the Caribbean and points in the U.S. without effective permit authority or an appropriate exemption;
3. We find that LIAT (1974) Limited violated 49 U.S.C. § 41301 and 49 U.S.C. § 41712 and 14 CFR Part 212 by conducting code-shared air transportation between the Dominican Republic and points in the U.S., pursuant to a wet lease agreement with Aerolineas Dominicanas which had not been approved under 14 CFR Part 212;
4. We order LIAT (1974) Limited, to cease and desist from further violations of 49 U.S.C. § 41301, 49 U.S.C. § 41712, Order 97-1-20, and 14 CFR Part 212, as described above; and
5. LIAT (1974) Limited is assessed \$90,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order. Of this amount, \$45,000 shall be paid in four installments according to the following 18-month schedule: the first payment of \$10,000 shall be due within 30 days of the service date of this order; the second, third, and fourth payments shall be due, respectively, 180 days, 360 days, and 540 days after the service date of this order. The second and third payments shall be in the amount of \$10,000 each; the final payment shall be \$15,000. The remaining \$45,000 of the penalty assessed here shall be suspended for 18 months following the service date of this order and shall be forgiven unless LIAT (1974) Limited fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41301, 49 U.S.C. § 41712, Order 97-1-20, and 14 CFR Part 212, or this order, during that period, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and the carrier may be subject to further enforcement action; and

6. Payments shall be by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject LIAT (1974) Limited to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely motion for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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